



January 11, 1988

H.J. "Jay" Shands, III
Vice Chairman and
Chief Executive Officer

RECORDED TO 1. 5475.

RECORDATION OF MORTGAGE
OF RAILROAD EQUIPMENT

JAN 19 1988 - 10 11 AM

Effective Date December 3, 1987

INTERSTATE COMMERCE COMMISSION

Secretary of the Interstate
Commerce Commission
Washington, D. C. 20423

1-19-88
10.00

Dear Secretary:

Pursuant to Title 49, Section 11303 U. S. C., Diboll Leasing Company, a party to the lease hereinafter mentioned, First RepublicBank Lufkin, is submitting herewith for recordation three sets of the lease dated June 4, 1979 (an original and two copies) all of which have been acknowledged pursuant to the requirements of 49 CFR 116.3. In accordance with 49 CFR 116.4, we furnish the following information:

Lessor: Billy Lee Thompson, P. O. Box 301, Lufkin, Texas 75901.

Lessee: Diboll Leasing Company, P. O. Box 636, Diboll, Texas 75941.

Equipment (Collateral): Two (2) 70-Ton, 50'6" Single Sheath Boxcars with Single 10' Sliding Doors centered on each car, Nailable Steel Flooring, Lading Anchors, AAR Plate "C", manufactured by FMC Corporation, Portland, Oregon, A.A.R. Mechanical Designation XM, bearing reporting markings and identifying marks TSE 5119 through TSE 5120, inclusive, including appurtenances and additions thereto, substitutions therefor, and all parts and accessories used in connection therewith, and the proceeds therefrom.

We are also enclosing herewith a cashier's check in the sum of \$10.00 to cover the filing costs.

We request that the lease agreement be duly recorded and returned to the Mortgagee (First RepublicBank Lufkin).

Your attention to the foregoing matter will be appreciated.

Sincerely,

H. J. Shands, III

enclosure
JS3/dph

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

H. J. Shands, III
First Republic Bank Lufkin
415 South First
P. O. Drawer 10
Lufkin, TX 75901

Dear Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/19/88 at 10:30AM, and assigned recordation number(s). 15474 & 15475

Sincerely yours,

Nanta L. McEneaney

Secretary

Enclosure(s)

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~~INTERSTATE COMMERCE COMMISSION~~

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RECORDATION NO. Filed 1425

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INTERSTATE COMMERCE COMMISSION

A LEASE BETWEEN

BILLY LEE THOMPSON

AND

DIBOLL LEASING COMPANY

I N D E X

	<u>Page</u>
1. SCOPE OF AGREEMENT	1
2. TERM.	3
3. SUPPLY PROVISIONS.	3
4. RENTALS.	4
5. REQUISITION BY GOVERNMENTAL AUTHORITY.	6
6. TAXES AND LIENS.	6
7. MAINTENANCE AND OTHER CHARGES.	7
8. POSSESSION AND USE	8
9. EQUIPMENT TO BE IDENTIFIED	8
10. RAILROAD MARKINGS AND RECORD KEEPING	9
11. ASSIGNMENT OR SUBLEASE BY DIBOLL	10
12. ASSIGNMENT BY LESSOR	10
13. GOVERNMENTAL AND INDUSTRIAL REGULATIONS.	11
14. INDEMNITY.	12
15. DEFAULT.	14
16. EARLY TERMINATION.	15
17. TERMINATION.	17
18. REPRESENTATIONS, WARRANTIES AND COVENANTS.	17
19. INSPECTION	18
20. LESSOR'S PERFORMANCE OF DIBOLL'S OBLIGATIONS	18
21. MISCELLANEOUS.	19
A. Binding Effect.	19
B. Other Documents	19

C. No Partnership.	19
D. Waiver.	19
E. Situs	20
F. Notices	20
G. Severability.	20
H. Amendments.	20
I. Paragraph Headings.	21
J. Counterparts.	21

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 4th day of June, 1979, between BILLY LEE THOMPSON, whose address is Route 1, Box 210-C, Pollok, Texas 75969, herein referred to as "Lessor," and DIBOLL LEASING COMPANY, a private corporation with its principal office and place of business in the City of Diboll, Angelina County, Texas, herein referred to as "Diboll".

W I T N E S S E T H:

1. SCOPE OF AGREEMENT

A. Lessor agrees to lease to Diboll, and Diboll agrees to lease from Lessor, the railroad boxcars described in the lease Schedule executed by the parties concurrently herewith or hereafter and made a part of this Agreement, the railroad boxcars described in the Schedule hereinafter referred to singularly as the "Boxcar" or collectively as the "Boxcars". The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement.

B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the lessor of all Boxcars. Diboll agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

C. It is further understood that the Boxcars herein leased are subject to a purchase money lien in favor of Republic National Bank of Dallas, and Diboll does hereby expressly acknowledge such purchase money lien. And, except for such purchase money lien, Diboll, at its expense, will protect and defend Lessor's title to the Boxcars and will keep the Boxcars free and clear from any and all liens, claims, encumbrances and legal processes of Diboll's creditors.

D. Diboll shall execute and deliver to Lessor, upon Lessor's request, such instrument and assurances as Lessor deems necessary for the confirmation or perfection of this Lease and Lessor's rights hereunder. In furtherance thereof, Lessor may file or record this Lease so as to give notice to any interested party. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code.

E. The equipment is and shall remain personal property and not part of any real estate. Upon the expiration or termination of this Lease as to any of the Boxcars, Diboll agrees to return each of the Boxcars in good working order, ordinary wear and tear excepted, free from all charges and liens which may result from any act or default of Diboll, to Lessor at the place where the rent is paid, or to such other place as Lessor and Diboll agree upon, complete with all parts, equipment, and accessories with which the Boxcar was originally equipped or which had been added during the term of the Lease.

F. Diboll shall have no option to purchase or otherwise acquire title to or ownership of any of the Boxcars and shall have only the right to use the same under and subject to the terms and provisions of this Lease.

2. TERM

A. The term of this Lease shall be for a period of one hundred twenty-five (125) months commencing June 1, 1979, and terminating on the 31st day of October, 1989.

B. Diboll shall have no option to renew or extend the Lease term.

3. SUPPLY PROVISIONS

A. It is acknowledged by Diboll that the Boxcars are being purchased by Lessor from FMC Corporation ("FMC") pursuant to specifications approved by Texas Southeastern Railroad Company ("TSE"); that each of the Boxcars will be delivered to Lessor for acceptance by FMC at Portland, Oregon.

B. Lessor or his representative will inspect each of the Boxcars tendered by FMC for delivery to Diboll. Prior to such inspection, however, Diboll shall confirm in writing to Lessor that the sample Boxcar which will be made available for Diboll's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Diboll. Upon such approval by Diboll and Lessor's determination that the Boxcars conforms to the specifications approved by TSE and to all applicable governmental regulatory specifications,

Diboll will accept delivery thereof at FMC's facility in Portland, Oregon, and shall notify Lessor in writing of such acceptance. Each of the Boxcars shall be deemed delivered to Diboll upon acceptance by Diboll. The Boxcars shall be moved by Diboll at no cost to Lessor as soon after acceptance of delivery by Diboll as is consistent with mutual convenience and economy. Notwithstanding that Diboll may not have immediate physical possession of the Boxcars leased hereunder, Diboll agrees to pay to Lessor the rent set forth in this Agreement.

C. The obligation of Lessor to furnish the Boxcars shall be subject to all causes reasonably beyond the control of Lessor, including, but not limited to, delays caused by fire, labor difficulties, delays of carriers and materialmen, or governmental authority; and Lessor shall not be liable for any damages by reason of any such delay.

4. RENTALS

A. Diboll agrees to pay to Lessor or its assignee (hereinafter collectively called "Lessor," except where the context otherwise indicates) for said term or any portion thereof, as rental for each Boxcar set forth in the Schedule, the sum of \$450.00 per month, the first rental installment for each Boxcar to become due and payable on the 1st day of October, 1979, or the 1st day of the month following the expiration of one hundred twenty (120) days after Diboll has accepted delivery of the Boxcar as provided in Paragraph 3A hereof, whichever occurs later. If requested by Lessor, Diboll agrees to execute a statement in writing as to the commencement date of the rental payment for each of the

Boxcars described in the Schedule. All rent shall be paid without notice or demand and without abatement, deductions or setoff of any amount whatsoever (except as otherwise provided herein), at such address of Lessor as Lessor shall direct.

B. In addition to the monthly rental provided in Paragraph 4A hereof, Diboll, as to each qualifying Boxcar, if any, shall pay the following rental:

(1) The term "lease year" shall mean any annual period, commencing with the first day of the month which coincides with the commencement of the term of this Lease, and the first day of each succeeding year during the term of this Lease.

(2) In the event utilization of any Boxcar leased by Lessor to Diboll under the terms hereof exceeds 85% in any lease year following the first lease year of the term hereof (such Boxcar being herein sometimes referred to as a "Qualifying Boxcar") Lessor shall receive as to such Qualifying Boxcar the following additional rental:

(i) As to any Qualifying Boxcar whose utilization exceeds 95% in any such lease year following the first lease year, Lessor shall receive an additional \$720.00; and

(ii) As to any Qualifying Boxcar whose utilization shall exceed 90% but shall not exceed 95%, Lessor shall receive an additional \$480.00; and

(iii) As to any Qualifying Boxcar whose utilization shall exceed 85% but shall not exceed 90% Lessor shall receive an additional \$240.00;

(iv) It is understood by and between the parties hereto that Diboll is contemporaneously herewith leasing unto Texas Southeastern Railroad Company 120 boxcars, some of which are owned by Diboll and some of which are owned by other lessors. For the purpose of identification, such boxcars have been numbered and marked "TSE 5001" through "TSE 5120." For convenience and to insure that each owner of such boxcars participates equitably in any additional rental resulting from higher utilization of such cars, such parties have entered into an agreement to pool all of such boxcars.

for the purpose of determining utilization, the additional rental payments, if any, and the proration thereof among such owners in proportion to the number of boxcars owned. Such agreement provides for the preparation of statements reflecting utilization of the boxcars; the maintaining of separate and accurate records reflecting utilization; audit procedures, and the like, the terms and conditions of which said agreement are incorporated herein by reference and made a part hereof for all purposes.

5. REQUISITION BY GOVERNMENTAL AUTHORITY

A. In the event that the Boxcars, or any of them, shall be requisitioned or taken over for a period which exceeds the remaining term of this Lease by any governmental authority under the power of eminent domain or otherwise during the term of this Lease, this Lease shall thereupon terminate in respect to such Boxcars or Boxcar, and Lessor shall be entitled to all sums payable by any governmental authority as compensation for such requisition or taking of possession.

B. In the event that during the term of this Lease the Boxcars, or any of them, are requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease, Diboll's duty to pay rent shall continue for the term hereof, and Diboll shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession of such Boxcars or Boxcar.

6. TAXES AND LIENS

Diboll agrees to report and pay, in addition to rent,

all ad valorem, sales, use, leasing, operation, excise, and other taxes with respect to the Boxcars, together with any penalties, fines, or interest thereon, and all duties, taxes, investment tax credit reductions, and similar charges arising out of use of the Boxcars outside the United States. Lessor agrees to reimburse Diboll for all ad valorem taxes levied and imposed upon the Boxcars by the State of Texas, its agents and instrumentalities. Diboll agrees not to encumber or dispose of this Lease or of any of the Boxcars or any part of a Boxcar or permit any encumbrance or lien to be entered or levied upon any of the Boxcars. Diboll will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

7. MAINTENANCE AND OTHER CHARGES

A. It is agreed by and between the parties hereto that Lessor will pay for all ordinary and necessary repairs, maintenance and servicing to the Boxcars.

B. Except as provided in Subparagraph 7A above, Diboll will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Boxcars during its lease term, including all major repairs which may increase the useful life of the Boxcars. Title to any such alteration, improvement or addition shall be that of Lessor.

8. POSSESSION AND USE

A. So long as Diboll shall not be in default under this Agreement, Diboll shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Agreement and in the manner and to the extent Boxcars are customarily used in the railroad freight business. However, Diboll's rights shall be subject to the rights of Republic National Bank of Dallas, its successors or assigns, under any financing agreement entered into by Lessor in connection with the acquisition of the Boxcars, i.e., upon notice to Diboll from Republic National Bank of Dallas, its successors or assigns, that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Boxcars be returned to such party.

B. Diboll agrees to use the Boxcars within the boundaries of the continental United States (exclusive of Alaska and Hawaii) and Canada.

9. EQUIPMENT TO BE IDENTIFIED

Diboll shall, upon the request of Lessor, and at its own expense firmly affix to the Boxcars, in a conspicuous place, such a decalcomania or metal plate as shall be supplied by Lessor showing Lessor, or Lessor's Assignee (if this Lease be assigned), as the owner and Lessor of such Boxcars.

10. RAILROAD MARKINGS AND RECORD KEEPING

A. Lessor and Diboll agree that on or before delivery of any Boxcars to Diboll, said Boxcars will be lettered with the railroad markings of Diboll or its permitted Assignee and may also be marked with the name and/or other insignia used by Diboll or its permitted Assignee. Such name and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessor, Diboll shall during the term of this Agreement prepare and file, or, when necessary, prepare for Lessor's signature and filing, all documents relating to the registration, maintenance and record keeping functions involving the Boxcars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Boxcar leased hereunder shall be registered at no cost to Lessor in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Diboll shall perform all record keeping functions related to the use of the Boxcars by Diboll and other railroads in accordance with AAR Railroad Interchange Agreements and Rules, such as Car Hire Reconciliation.

D. All record keeping performed by Diboll hereunder and all record of payments, charges and correspondence related to

the Boxcars shall be separately recorded and maintained by Diboll in a form suitable for reasonable inspection by Lessor from time to time during regular Diboll business hours. Diboll shall supply Lessor such reports recording the use of the Boxcars as Lessor may reasonably request.

11. ASSIGNMENT OR SUBLEASE BY DIBOLL

A. Diboll, during the term hereof, shall have the right to assign this Lease or sublet all or any part of the Boxcars to Texas Southeastern Railroad Company, herein sometimes referred to as "TSE" or the "Permitted Assignee". In such event, the Permitted Assignee shall be entitled to the possession, use and quiet enjoyment of the Boxcars to the extent Boxcars are customarily used in the railroad freight business and subject to the terms of this Agreement.

B. Notwithstanding anything to the contrary, in the event of any such assignment or sublease by Diboll to TSE, Diboll shall remain fully responsible and liable on this Lease and shall not be released from performing any of its terms, covenants, provisions and conditions.

12. ASSIGNMENT BY LESSOR

A. For the purpose of providing funds for financing the purchase of the Boxcars, or for any other purpose, Diboll agrees (a) that Lessor may assign, sell or encumber all or any other part of this Lease Agreement, the Boxcars and the rental payments hereunder and (b) in the event of any such assignment of

rental payments hereunder and written notice thereof to Diboll, to unconditionally pay directly to any such assignee all rentals and other sums due or to become due under this Lease Agreement. Any such assignment shall be in respect of this Lease and/or the rents and other sums due and to become due in respect of the Boxcars, and may be either absolute or as collateral security for indebtedness of the Lessor.

B. No such assignee for collateral purposes shall be obligated to perform any duty, covenant or condition required to be performed by the Lessor under any of the terms hereof, but to the contrary, Diboll, by its execution hereof, acknowledges and agrees that notwithstanding any such assignment each and all such covenants, agreements, representations and warranties of the Lessor shall survive any such assignment and shall be and remain the sole liability of the Lessor, his successors, heirs and assigns.

C. LESSOR AND/OR LESSOR'S ASSIGNEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, DESIGN OR CONDITION, THE MERCHANTABILITY OF THE BOXCARS OR THE FITNESS OF THE BOXCARS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE BOXCARS OR WORKMANSHIP IN THE BOXCARS, INFRINGEMENT OR OTHERWISE.

13. GOVERNMENTAL AND INDUSTRIAL REGULATIONS

Diboll agrees to comply with all governmental laws, rules, regulations, and requirements, and with the Interchange

Rules of the AAR with respect to the use and operation of each of the Boxcars during the term of this Agreement, except that Diboll may in good faith and by appropriate proceedings contest the application of any such law, rule, regulation or requirement in any reasonable manner and at its expense.

14. INDEMNITY

A. Lessor will defend, indemnify and hold Diboll harmless from and against any and all loss or damage of or to the Boxcars, usual wear and tear excepted, except any loss, liability, claim, damage, or expense which is directly attributable to the fault or neglect of Diboll and for which Lessor is not covered by insurance.

B. In the event the Boxcars are subleased by Diboll to TSE, Lessor will (subject to the further provisions of Subparagraph C hereof) defend, indemnify and hold TSE harmless from and against any and all loss or damage of or to the Boxcars, usual wear and tear excepted, unless occurring while TSE has physical possession of the Boxcars. Diboll will secure an agreement from TSE that shall provide that (1) TSE will at all times while this Agreement is in effect be responsible for the Boxcars while on TSE's railroad tracks in the same manner that TSE is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules--Freight for cars not owned by TSE on TSE's railroad tracks. TSE shall protect against the consequences of an event of loss involving the Boxcars while on TSE's railroad tracks by either obtaining insurance or maintaining a self-insurance program which

conforms to sound actuarial principles; and (2) if TSE elects to carry insurance, it shall furnish Lessor or Diboll concurrently with the execution of the sublease and thereafter at intervals of not more than twelve (12) calendar months with a certificate of insurance with respect to the insurance carried on the Boxcars signed by an independent insurance broker. All insurance shall be taken out in the name of TSE, Diboll and Lessor (or its Assignee) as their interest may appear.

C. Lessor shall not indemnify nor hold harmless TSE against loss or damage of or to the Boxcars, usual wear and tear excepted, which is directly attributable to the fault or neglect of TSE and for which Lessor is not covered by insurance.

D. Lessor shall not be liable for any loss of, or damage to, commodities, or any part thereof, loaded or shipped in the Boxcars, however such loss or damage shall be caused or shall result. Diboll agrees to assume responsibility for, to indemnify Lessor against, and to save it harmless from, any such loss or damage, or claim therefor.

E. Lessor and Diboll mutually agree with respect to and to the extent of any loss covered and paid by insurance then being carried by them respectively, the one carrying such insurance and receiving such protection, releases the other of and from any and all claims with respect thereto; and they further mutually agree that their respective insurer shall have no right of subrogation against the other on account thereof, and their respective policies shall so provide. In this connection, Lessor has made known to Diboll the difficulty in obtaining hazard and extended

coverage, comprehensive general liability, and loss of use insurance on the Boxcars at a reasonable premium, if at all. Diboll, in addition to owning a number of boxcars, anticipates further leasing of additional cars. Lessor has suggested that the necessary insurance coverage be marketed as a group rather than by each individually in order to maximize leverage with insurance underwriters. Diboll, at the request of Lessor and other lessors from whom Diboll is leasing boxcars, has agreed to cooperate in the placement of an insurance policy or policies which would list Diboll, Lessor and other lessors, As Their Interest May Appear, as named insured, and each such insured would pay his pro rata portion of the insurance coverage. In the event the parties hereto are unable to secure insurance in such manner but do in fact otherwise secure insurance, Lessor and Diboll each agree that as to any policy of general liability insurance carried by either of them, they will seek to have the other added thereto as an additional insured.

F. All indemnities contained in this Agreement shall survive the termination hereof, however same shall occur.

15. DEFAULT

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Diboll of any sum required herein to be paid by Diboll within ten days after the date any such payment is due.

(ii) The breach by Diboll of any other term, covenant, or condition of this Agreement, which is not cured within ten days following the receipt of written notification of Diboll's failure to comply herewith.

(iii) Any act of insolvency by Diboll, or the filing by Diboll of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Diboll that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Diboll, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Diboll's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

B. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Agreement and may

(i) Proceed by any lawful means to enforce performance by Diboll of this Agreement or to recover damages for a breach thereof (and Diboll agrees to bear Lessor's costs and expenses, including reasonable attorney's fees, in securing such enforcement), or

(ii) By notice in writing to Diboll, terminate Diboll's right of possession and use of the Boxcars, whereupon all right and interest of Diboll in the Boxcars shall terminate; and thereupon Lessor may enter upon any premises where the Boxcars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Diboll. Lessor shall nevertheless have the right to recover from Diboll any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

16. EARLY TERMINATION

A. Diboll may, at its option, by giving Lessor written notice of termination not less than sixty (60) days prior to the termination date designated in such notice, terminate this Agreement as to one or more of the Boxcars if the Interstate Commerce

Commission shall, at any time, (i) issue an order reducing incentive car hire for boxcars on an annual basis to three months or less without a corresponding increase in straight car hire or other monies available to Diboll at least equal in amount to such reduction, (ii) determine that Diboll may not apply its incentive car hire receipts in payment of the rental charges set forth in this Agreement, or (iii) require that Diboll spend funds not earned by the Boxcars in order for Diboll to continue to meet its obligations set forth in this Lease Agreement.

B. Diboll shall not, by reason of such early termination of this Agreement in accordance with the terms and provisions hereof, be liable to Lessor for compensation, reimbursement or damages, either on account of present or prospective profits or on account of expenditures, investments or commitments made in connection therewith, or on account of any other cause or thing whatsoever, except as is otherwise herein provided.

C. Except as may be otherwise expressly set forth herein, upon the expiration or termination of this Agreement as to one or more of the Boxcars, all obligations of the parties as to such Boxcar or Boxcars shall immediately cease. Diboll shall, however, provide reasonable assistance to Lessor in transferring to Lessor, all at Diboll's expense and upon Lessor's request, all records, data and other information relating to the Boxcars.

D. In the event damage or destruction of a Boxcar has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules--Freight and the

appropriate amount due as a result thereof is received by Lessor, said damaged or destroyed Boxcar will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

17. TERMINATION

At the expiration or termination of this Agreement as to any Boxcars, Diboll will surrender possession of such Boxcars to Lessor by delivering the same to Lessor. A Boxcar shall be no longer subject to this Agreement upon the removal of Diboll's or its Permitted Assignee's railroad markings from the Boxcar and the placing thereon of such markings as may be designated by Lessor. If such Boxcars are not on the railroad line of TSE upon termination, any cost of assembling, delivering, storing, and transporting such Boxcars to TSE's railroad line or the railroad line of a subsequent Lessee shall be borne by Diboll. If any Boxcar is terminated pursuant to Paragraphs 15 and 16 hereof prior to the end of its lease term, Diboll shall be liable to Lessor for all costs and expenses incurred by Lessor to repaint the Boxcars and place thereon the markings and name or other insignia of Lessor's subsequent lessee.

18. REPRESENTATIONS, WARRANTIES AND COVENANTS

Diboll represents, warrants and covenants that:

(i) Diboll is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operation and to own or hold under lease its properties and perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Diboll, or result in a breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Diboll or on the Boxcars pursuant to any instrument to which Diboll is a party or by which it or its assets may be bound.

(iii) There is not action or proceeding pending or threatened against Diboll before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, property and assets, or conditions, financial or otherwise, of Diboll.

(iv) There is no fact which Diboll has not disclosed to Lessor in writing, nor is Diboll a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Diboll can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Diboll or the ability of Diboll to perform its obligations under this Agreement.

19. INSPECTION

Lessor shall at any time during normal business hours have the right to enter the premises where the Boxcars may be located for the purpose of inspecting and examining the Boxcars to insure Diboll's compliance with its obligations hereunder. Diboll shall notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall be attached to any Boxcar.

20. LESSOR'S PERFORMANCE OF DIBOLL'S OBLIGATIONS

If Diboll shall fail to duly and promptly perform any of its obligations under this Lease with respect to the Boxcars, Lessor may, at Lessor's option, perform any act or make any

payment which Lessor deems necessary for the maintenance and preservation of the Boxcars and Lessor's title thereto, including payments for satisfaction of liens, repairs and levies, and all sums so paid or incurred by Lessor, together with interest at the highest lawful rate, and any reasonable legal fees incurred by Lessor in connection therewith, shall be additional rent under this Lease and payable by Diboll to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of Diboll.

21. MISCELLANEOUS

A. Binding Effect: This Agreement and the Schedule contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

B. Other Documents: Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Agreement.

C. No Partnership: It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Boxcars only and no joint venture or partnership is being created. Nothing herein shall be construed as conveying to Diboll any right, title or interest in the Boxcars except as a lessee only.

D. Waiver: No failure of delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or

remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. Situs: This Agreement shall be governed by and construed according to the laws of the State of Texas.

F. Notices: All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage pre-paid, certified or registered, addressed to Lessor at the address set forth above and to Diboll at the following address:

Diboll Leasing Company
P. O. Box 636
Diboll, Texas 75941

or to Lessor or Diboll at such other addresses as either of the parties hereto may designate in writing to the other from time to time for such purpose.

G. Severability: Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition and unenforceable without invalidating the remaining provisions hereof. To the extent permitted by applicable law, Diboll hereby waives any provision of law which prohibits or renders unenforceable any provisions hereof in any respect.


H. Amendments: This Amendment and the Schedule executed by Lessor and Diboll constitute the entire agreement between Lessor and Diboll with respect to the Boxcars and the subject

matter of this Lease. No term or provision of this Lease may be changed, modified, amended or terminated except by a written agreement signed by both Lessor and Diboll, except that Lessor may insert the identification number as to a Boxcar on the appropriate Schedule after delivery thereof.

I. Paragraph Headings: The paragraph headings contained in this Agreement are provided for convenient reference only and shall not be considered for any purpose in analyzing or construing the intention of the parties with respect to this Agreement.

J. Counterparts: This Agreement may be executed in one or more counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.


"LESSOR"

DIBOLL LEASING COMPANY

By 
President

"DIBOLL"

LEASE SCHEDULE

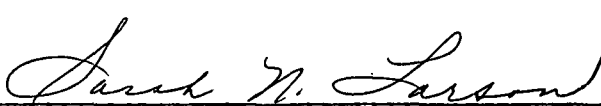
<u>ITEM</u>	<u>QUANTITY</u>	<u>MARKINGS - IDENTIFICATION</u>
FMC Corporation 70-Ton 50'6" Single Sheath Boxcar with Single 10' Sliding Doors Centered on Car, Nailable Steel Flooring, Lading Anchors, AAR Plate "C"	2	"TSE 5119" through "TSE 5120"

Individual Form of Acknowledgment

The State of Texas

County of Angelina

On this 4th day of June, 1979, before me personally appeared
BILLY LEE THOMPSON, to me well
known to be the person described in and who executed the foregoing in-
strument and he acknowledged that he executed the same as his free act
and deed.


Notary Public, in and for Angelina
County, Texas.

My commission expires: _____

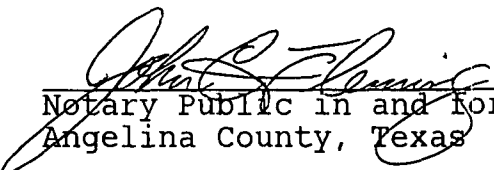
SARAH N. LARSON, Notary Public
Angelina County, Texas
My Commission Expires 11/30/80

THE STATE OF TEXAS ¶

COUNTY OF ANGELINA ¶

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared C. TOM SUMNER, President of Diboll Leasing Company, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Diboll Leasing Company, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 4th day of June, 1979.



Notary Public in and for
Angelina County, Texas

JOHN C. FLEMING
Notary Public